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No. 87

In the Supreme Court of the United States

OCTOBER TERM, 1930

SETH M. MILLIKEN, GERRISH H. MILLIKEN, AND HAROLD A. HATCH, EXECUTORS OF THE ESTATE OF SETH M. MILLIKEN, DECEASED, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 87

SETH M. MILLIKEN, GERRISH H. MILLIKEN, AND Harold A. Hatch, Executors of the Estate of Seth M. Milliken, Deceased, petitioners

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition in this case.

QUESTION PRESENTED

Whether the value of property gratuitously transferred in contemplation of death, prior to the enactment of the Revenue Act of 1918 but after the enactment of the Revenue Act of 1916, may constitutionally be included, under Section 402 (c) of the Revenue Act of 1918, in the gross estate of the transferror who died on March 5, 1920.

STATUTES INVOLVED

The Revenue Act of 1916 (Act of September 8, 1916, c. 463, 39 Stat. 756, 777) provides in part:

> SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:
>
> (Here follows a table of percentages.)
>
> SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:
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> * * * * *
>
> (b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in con-

templation of death within the meaning of this title; * * *

The Revenue Act of 1918 (Act of February 24, 1919 c. 18, 40 Stat. 1057, 1096, 1097) provides in part:

SEC. 401. That (in lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act whether a resident or nonresident of the United States:

(Here follows a table of percentages, materially higher than those in the Revenue Act of 1916.)

SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act) except in case of a bona fide sale for a fair consideration in

money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title.

STATEMENT

In December, 1916, Seth M. Milliken gave certain stock to his three children. At that time the Revenue Act of 1916 was in force, and if the death had then occurred the gift would have been taxable under that Act at a rate of approximately ten per cent. The petitioners have waived any right to contend that the transfer was not in fact made in contemplation of death. (R. 15.)

On March 5, 1920, the transferror died. At that time the Revenue Act of 1918 was in effect. The 1918 Act repeated substantially the same language as the 1916 Act, except that the 1918 Act was expressly retroactive; and the rates imposed by the 1918 Act were substantially higher than those under the 1916 Act.

The petitioners, executors of the transferror's estate, did not include in the decedent's gross estate the value of this stock. (R. 15.) The petitioners contended that the gift could not be taxed under the 1916 Act because that Act had been repealed before the transferror's death; they also contended that the gift could not be taxed under the 1918 Act,

because that Act could not constitutionally be applied to a gift which was made before its passage. The Commissioner held that the gift was taxable under the Revenue Act of 1918, valued the stock at the date of death at $3,308,720.54, and redetermined the tax due from the petitioners after adding this sum to the gross estate (R. 15). The petitioners paid the tax so determined and, after their claim for refund was rejected, brought this suit in the Court of Claims. The Court of Claims dismissed their petition.

We submit that the decision of the Court of Claims was correct, and there are no decisions in conflict. But the question presented is an important one, and is involved in numerous cases now pending in the courts and before the Treasury Department. Consequently, we do not oppose the petition.

Respectfully submitted.

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